



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Art Unit: 1636
WOLFF, et al.)) Examiner: LAMBERTSON, D.
Serial No.: 10/092,947)) Washington, D.C.
Filed: March 8, 2002)) September 16, 2004
For: RECOMBINANT DIMORPHIC)) Docket No.: WOLFF=3
FUNGAL CELL)) Confirmation No.: 7383

ELECTION WITH TRAVERSE

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, Virginia 22202

S i r :

In response to the restriction requirement mailed August 24, 2004, we hereby elect group I, with traverse.

It is noted that the Examiner acknowledges that claim 1 links inventions I-VII and thus, that allowance of claim 1 would compel rejoinder of groups II-VII.

If groups II-VII are rejoined, we will contest the requirement that a single nucleotide sequence be identified. MPEP 2434 says that the normal rule is to allow up 10 independent and distinct nucleotide sequences, encoding different proteins, without restriction. There has been no showing that this case is so much more complex than the normal biotech case with nucleotide sequence disclosures such that the limit should be reduced from ten to one. There is, for example, no claim reciting a 3D structure. See MPEP 803.04 and 2434. Even if designation of a single sequence is appropriate, this should be considered an election of species per 37 CFR 1.141. That is more consistent with the explicit authorization of rejoinder.

The claims of groups I-VII are directed to nucleic acids, and those of groups VIII-X to polypeptides. The Examiner mistakenly characterizes them as "unrelated".

Claim 75, in group VIII, is directed to a polypeptide encoded by the nucleic acid of claim 1 (group I). They are thus

USSN - 10/092,947

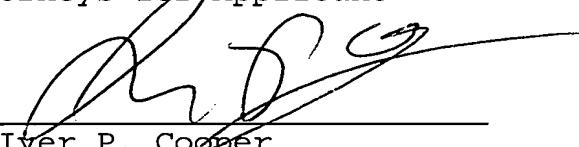
related, as final-to-intermediate product. There is also a subcombination-combination relationship between the polypeptide of group VIII and the polypeptide-expressing cells of group I. See MPEP 806.05(c).

The claims of groups XI-XIV relate to the use of fungal cells of claim 82, which in turn is a group I claim. If claim 82 is allowable, then groups XI-XIV must be rejoined pursuant to MPEP 821.04.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By:


Iver P. Cooper
Reg. No. 28,005

624 Ninth Street, N.W.
Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
IPC:lms
G:\ipc\g-i\hoib\Wolff3\PTO ELECTIONTRAV.WPD